IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 28874 of 2006(K)

OS.154/2005 of II ADDL.SUB COURT,KOZHIKODE

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PETITIONER:

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1. PARAMANNIL BHARATHAN, AGED 60 YEARS,
S/O. RAGHAVAN, RESIDING AT MARAKKAD VALAPPIL,
VENGERI AMSOM DESOM, KARAPARAMBU,
KOZHIKODE TALUK.

2. PARAMANNIL LAKSHMANAN, AGED 58 YEARS,
S/O. RAGHAVAN, RESIDING AT MOHANAVILLA,
EAST HILL ROAD, KACHERI AMSOM DESOM,
KOZHIKODE.

3. VENU @ VENUGOPAL, AGED 53 YEARS,
S/O. RAGHAVAN, RESIDING AT PARAMANNIL,
KARUVASSERI.

4. PARAMANNIL RAMANATHAN, AGED 51 YEARS,
S/O. RAGHAVAN, RESIDING AT MOHANAVILLA,
EAST HILL ROAD, KACHERI AMSOM DESOM, KOZHIKODE.

5. PADMINI, AGED 56 YEARS,
W/O. ODATTU BALAKRISHNAN, RESIDING AT VIKAS NAGAR,
KOLAMODIKKUNNU, P.O.NELLIKKODE.

6. LALITHA, AGED 60 YEARS,
W/O. VELAYUDHAN, RESIDING AT MALAYATHODI HOUSE,
MANAKKADAVU, PANTHEERANKAVU, KOZHIKODE.

7. SUJATHA, AGED 50 YEARS,
W/O. VISAKH BABU, RESIDING AT SOORYODAYAM,
NEAR AZHAKODI DEVI TEMPLE, THIRUTHIYAD,
PUTHIYARA P.O., KOZHIKODE.

8. MOHINI, AGED 49 YEARS, D/O. RAGHAVAN,
RESIDING AT MOHANAVILLA, EAST HILL ROAD,
KACHERI AMSOM DESOM, KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:
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1. RAMADAS, S/O. RAGHAVAN PARAMANNIL,
RESIDING AT VADOOR MEETHAL,
P.O.NELLIKODE, KOZHIKODE.

2. SUBHASHINI, W/O. SASI,
RESIDING AT VADOOR MEETHAL, P.O.NELLIKKODE,
NEAR THIPPILAKKAD TEMPLE, GOVINDAPURAM.

3. VISALAKSHI, W/O. SUBHASH,
RESIDING AT NARAYANI NILAYAM, EAST HILL,
KACHERI AMSOM DESOM.

4. RAMANI, W/O. MOHAN DAS,
RESIDING AT MAYA, NEAR UDAYAKURUMBA TEMPLE,
KARAPARAMBU P.O., KACHERI AMSOM DESOM.

5. MOHANDAS, S/O. KRISHNAN,
RESIDING AT CHAKKITTA IDA ROAD,
ERANHIPALAM.

6. GEETHA, W/O. KOMAL RAJ, C/O. RAMANI,
RESIDING AT MAYA, NEAR UDAYAKURUMBA TEMPLE,
KARAPARAMBU P.O., KACHERI AMSOM DESOM.

7. DEVADAS, S/O. KRISHNAN,
RESIDING AT KESAVAMENON NAGAR,
BILATHIKULAM, K.S.H.B. COLONY, ERANHIPALAM.

8. VIJAYALAKSHMI, W/O. BABU,
RESIDING AT CHARAMUNNI PARAMBA,
NEAR NELLIKKAVU TEMPLE, ERANHIPALAM.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the plaint.

Ext.P2:- True copy of the written statement filed by respondents 1 and 2.

Ext.P3:- True copy of the written statement filed by the respondents 3,4 and 6 to 8.

Ext.P4:- True copy of the rejoinder filed by the petitioners.

Ext.P5:- True copy of the amendment application.

Ext.P6:- True copy of the order dated 27.9.2006.

/true copy/

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.28874 OF 2006

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Dated this the 14th day of December,2006

JUDGMENT

Petitioners are the plaintiffs in O.S.154/05 on the file of II Additional Sub Court, Kozhikode. Respondents are the defendants. Under Ext.P5 application filed under Order VI Rule 17 of Code of Civil Procedure, petitioners sought amendment of the plaint. It was dismissed under Ext.P6 order. Ext.P6 order is challenged in this petition filed under Article 227 of the Constitution of India.

2. Learned counsel appearing for petitioners and respondents were heard.

3. The suit is one for partition. As per the original plaint, plaint schedule property originally belonged to one Kandan and on his death the property devolved on his widow Kuttooli and children Raghavan, Krishnan and Narayani and on their death, it devolved on the plaintiffs and defendants. Defendants 3 to 8, the children of

deceased krishnan, in their written statement contended that Kuttooli did not derive any right by inheritance from Kandan and Kandan executed a gift deed in favour of his wife Kuttooli and children Raghavan, Krishnan and Narayani and Kuttooli and Narayani had no independent right over the property except by virtue of the gift deed. Plaintiffs have filed a rejoinder also accepting that contention. Subsequently Ext.P5 application was filed seeking an amendment of the plaint incorporating the said pleadings by deleting the earlier contention that property devolved on Kuttooli and her children. The son and the daughter of Raghavan filed an objection to the amendment application contending that by the amendment the original admission is taken away and therefore it cannot be permitted.

4. Under Ext.P5 order learned Sub Judge upheld the objection and dismissed the application. The argument of learned counsel appearing for petitioners is that even without the amendment application defendants 3 to 8 had already raised

the same contention in their written statement and plaintiffs have also reiterated the contention by filing a rejoinder and the learned Sub Judge should have allowed the application as sought for in Ext.P5 and therefore Ext.P6 order is to be quashed. Learned counsel appearing for respondents 1 and 2 argued that there is an admission in the plaint that the property belongs to Kuttooli and Narayani and by the amendment, the original admission cannot be taken away and therefore it cannot be permitted.

4. On hearing learned counsel appearing for petitioners and respondents, it is clear that learned Sub Judge has not properly appreciated the evidence as is clear from Ext.P6 order. As the suit is one for partition, each of the defendants stands in the footing of plaintiffs. Defendants 3 to 8 on their part have already raised a contention in the written statement, the very same plea sought to be introduced by the plaintiffs under Ext.P5. In such circumstances, learned Sub Judge

has necessarily to go into that question and decide whether kuttooli and Narayani inherited the property or whether they have got right only under the gift deed. In such circumstances, learned Sub Judge should have allowed amendment sought for, as it will not cause any prejudice to the parties. For a just decision it is necessary to grant the permission. In such circumstance, Ext.P6 order is quashed. Ext.P5 amendment application stands allowed. The defendants are entitled to file additional written statement.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006